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HOUSE BILL 132

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Rick Mi era

AN ACT

RELATING TO HIGHER EDUCATION; BROADENING THE POWER OF THE  
EDUCATIONAL ASSISTANCE FOUNDATION TO ISSUE EDUCATIONAL LOANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 21-21A-1 NMSA 1978 (being Laws 1981,  
Chapter 319, Section 1) is amended to read:

"21-21A-1. SHORT TITLE. -- [~~This act~~] Chapter 21, Article  
21A NMSA 1978 may be cited as the "Educational Assistance  
Act". "

Section 2. Section 21-21A-2 NMSA 1978 (being Laws 1981,  
Chapter 319, Section 2) is amended to read:

"21-21A-2. PURPOSE. -- The purpose of the Educational  
Assistance Act is to promote the public welfare and prosperity  
of the people of New Mexico by stimulating the availability of  
financial assistance for post-secondary education so as to give

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1 ~~[the people of New Mexico]~~ greater higher education  
2 opportunities. "

3 Section 3. Section 21-21A-3 NMSA 1978 (being Laws 1981,  
4 Chapter 319, Section 3, as amended) is amended to read:

5 "21-21A-3. DEFINITIONS. -- As used in the Educational  
6 Assistance Act:

7 A. "bond" means any bond, note or other evidence of  
8 indebtedness;

9 B. "corporation" means a corporation formed  
10 pursuant to the provisions of the Educational Assistance Act to  
11 guarantee educational loans;

12 C. "educational loan" means a loan for educational  
13 purposes made to or for the benefit of qualified persons;

14 D. "foundation" means a corporation formed pursuant  
15 to the provisions of the Educational Assistance Act to provide  
16 financial assistance for post-secondary education; and

17 E. "institution of higher education" means the  
18 state institutions of higher education enumerated in Article  
19 12, Section 11 of the constitution of New Mexico or ~~[state]~~  
20 other institution of higher education ~~[recognized by the~~  
21 ~~commission of higher education]~~ approved by the foundation. "

22 Section 4. Section 21-21A-5 NMSA 1978 (being Laws 1981,  
23 Chapter 319, Section 5, as amended) is amended to read:

24 "21-21A-5. NONPROFIT FOUNDATION AUTHORIZED--PURPOSE. -- A  
25 majority of the four-year institutions of higher education may

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1 form, pursuant to the provisions of the Nonprofit Corporation  
2 Act, a nonprofit foundation, separate and apart from the state.  
3 The purpose of the foundation [~~authorized pursuant to this~~  
4 ~~section~~] is to improve the educational opportunities of  
5 residents of New Mexico by providing financial assistance to  
6 qualified persons, including [~~but not limited to~~] a program of  
7 making, financing, purchasing, holding and selling [~~insured~~]  
8 educational loans, and by servicing educational loan,  
9 scholarship, grant, work study and other educational assistance  
10 programs. "

11 Section 5. Section 21-21A-7 NMSA 1978 (being Laws 1981,  
12 Chapter 319, Section 7, as amended) is amended to read:

13 "21-21A-7. FOUNDATION POWERS. --The foundation may from  
14 time to time issue negotiable bonds in conformity with the  
15 applicable provisions of the Uniform Commercial Code. The  
16 foundation shall have all the powers necessary and convenient  
17 to carry out its purposes under the Educational Assistance Act,  
18 including the following powers:

19 A. to make or participate in the making of [~~insured~~  
20 ~~student~~] educational loans, to purchase or participate in the  
21 purchase of [~~insured student~~] educational loans and to contract  
22 in advance for any such purchase or to purchase and retain  
23 rights to make any such purchase and to pay any amounts payable  
24 in respect of such rights;

25 B. to sell or participate in the sale of [~~insured~~

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1 ~~student~~] educational loans to the student loan marketing  
2 association or to other purchasers, in conformity with the  
3 federal Higher Education Act of 1965, as amended, any such sale  
4 to be public or private and on such terms as the foundation may  
5 authorize, and to contract in advance for any such sale or to  
6 purchase and retain rights to make any such sale and to pay  
7 commitment fees or any other amounts payable in respect of such  
8 rights;

9 C. to collect and pay reasonable fees and charges  
10 in connection with the making, purchasing, selling and  
11 servicing or the causing to be made, purchased, sold or  
12 serviced of [~~insured student~~] educational loans held by the  
13 foundation;

14 D. to enter into an agreement with insurance  
15 carriers to insure against any loss in connection with its  
16 operations, including without limitation the repayment of any  
17 [~~insured student~~] educational loan, in such amounts and from  
18 such insurers as it deems necessary or desirable and pay the  
19 premiums for that insurance;

20 E. to consent, when it deems appropriate, to the  
21 modification of the rate of interest, the time of payment of  
22 any installment of principal or interest or any other terms of  
23 any [~~insured student~~] educational loan held by the foundation;  
24 provided that no such consent shall be made or given if the  
25 effect would be to lessen or invalidate any insurance coverage

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1 or reinsurance in respect of any such [~~insured student~~]  
2 educational loan;

3 F. to employ an executive director and such other  
4 officers and employees as it deems necessary and set their  
5 compensation and prescribe their duties; provided that no  
6 salary of any officer or employee of the foundation shall  
7 exceed ninety percent of the average of the salaries of the  
8 presidents of the state institutions of higher education  
9 enumerated in Article 12, Section 11 of the constitution of New  
10 Mexico;

11 G. to adopt and publish rules [~~and regulations~~] in  
12 accordance with the provisions of the State Rules Act  
13 respecting the foundation's [~~insured student~~] educational loan  
14 program and such other rules [~~and regulations~~] as are necessary  
15 to effectuate the program's purposes and the functions and  
16 duties of the foundation;

17 H. to make, execute and effectuate any and all  
18 agreements or other documents with any federal or state agency  
19 or other person, corporation, association, partnership,  
20 organization or entity necessary to accomplish its purposes  
21 under the Educational Assistance Act;

22 I. to authorize a retirement program for salaried  
23 officers and employees of the foundation;

24 J. to authorize reimbursement of expenses of salaried  
25 officers and employees of the foundation not exceeding the

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1 amounts authorized by law for salaried state public officers  
2 and employees;

3 K. to purchase liability insurance for officers and  
4 directors and such other insurance as may be reasonable and  
5 necessary;

6 L. to accept appropriations, loans, grants, revenue  
7 sharing, devises, gifts, bequests, federal grants and any other  
8 aid from any source whatsoever and to agree to and comply with  
9 conditions incident thereto;

10 M to sue and be sued in its own name and to plead  
11 and interplead;

12 N. to adopt an official seal and alter it at  
13 pleasure;

14 O. to adopt bylaws and policies for the regulation of  
15 its affairs and the conduct of its business;

16 P. to employ fiscal consultants, attorneys,  
17 counselors and such other consultants and employees as may be  
18 required in its judgment and to fix and pay their compensation;

19 Q. to invest any funds held in reserves, held in  
20 sinking fund accounts or not required for immediate  
21 disbursement as provided in Section 21-21A-17 NMSA 1978;

22 R. to fix, revise from time to time, charge and  
23 collect fees and other charges for services rendered by the  
24 foundation in connection with educational loan, scholarship,  
25 grant, work study and other educational assistance programs;

. 153208. 1

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1 and

2 S. to do any and all things necessary or convenient  
3 to carry out its purpose and powers under the Educational  
4 Assistance Act. "

5 Section 6. Section 21-21A-8 NMSA 1978 (being Laws 1981,  
6 Chapter 319, Section 8, as amended) is amended to read:

7 "21-21A-8. ISSUANCE OF REVENUE BONDS. --The foundation may  
8 from time to time issue negotiable revenue bonds. The proceeds  
9 of the sale of the bonds issued pursuant to the Educational  
10 Assistance Act may be used to fund reserves for the bonds, to  
11 pay interest on the bonds and to pay the necessary expenses of  
12 issuing the bonds, including [~~but not limited to~~] bond counsel  
13 and fiscal advisory fees and other legal, consulting and  
14 printing fees and costs. All bonds may be issued in one or  
15 more series. The bonds of each issue shall be dated and bear  
16 interest payable as prescribed by the foundation. The bonds  
17 shall mature serially or otherwise not later than thirty years  
18 from their date and may be redeemable before maturity, at the  
19 option of the foundation, at prices and under terms and  
20 conditions fixed by the foundation in its resolution or trust  
21 agreement providing for issuance of the bonds. The resolution  
22 or trust agreement shall also determine the form of the bonds,  
23 including the form of any interest coupons to be attached to  
24 the bonds, and shall fix the denominations of the bonds and the  
25 place of the payment of the principal and interest of the

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1 bonds. The bonds shall be executed on behalf of the foundation  
2 as special obligations of the foundation payable only from the  
3 funds specified in the Educational Assistance Act and shall not  
4 be a debt of the state, any eligible post-secondary institution  
5 or any municipality, and neither the state nor any eligible  
6 post-secondary institution or municipality shall be liable for  
7 the bonds. The resolution or trust agreement may provide for  
8 registration of the bonds as to ownership and for successive  
9 conversion and reconversion from registered to bearer bonds and  
10 vice versa. The bonds may be registered in the office of the  
11 foundation. After the registration and delivery to the  
12 purchasers, the bonds are incontestable and constitute special  
13 obligations of the foundation, and the bonds and coupons are  
14 negotiable instruments under the laws of the state. The bonds  
15 may be sold at public or private sale by the foundation at  
16 prices and in accordance with procedures and terms it  
17 determines to be advantageous and reasonably obtainable. The  
18 foundation may provide for replacement of any bond ~~[which]~~ that  
19 is mutilated or destroyed. No bond proceeds may be expended  
20 for the making or purchase of any educational loan, unless  
21 ~~[such]~~ the loan is an ~~[insured]~~ educational loan."

22 Section 7. Section 21-21A-18 NMSA 1978 (being Laws 1981,  
23 Chapter 319, Section 18) is amended to read:

24 "21-21A-18. INVESTMENT OF SEVERANCE TAX PERMANENT FUND IN  
25 BONDS AND EDUCATIONAL LOAN NOTES. --

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1           A. In addition to all other investments of the  
2 severance tax permanent fund authorized by law, the state  
3 treasurer may, with the prior approval of the state board of  
4 finance, annually invest a portion of the severance tax  
5 permanent fund in bonds and educational loan notes authorized  
6 by the Educational Assistance Act, which bonds and notes shall  
7 be held by the state treasurer until maturity unless earlier  
8 repurchased or repaid by the foundation.

9           B. Payments of principal on bonds and educational  
10 loan notes purchased by the state treasurer from the severance  
11 tax permanent fund shall be credited by the state treasurer to  
12 the severance tax permanent fund. Payments of interest on such  
13 bonds and educational loan notes shall be credited to the  
14 severance tax income fund.

15           C. The foundation may from time to time purchase any  
16 or all of such bonds and educational loan notes from the state  
17 treasurer.

18           D. The [~~board of educational finance~~] commission on  
19 higher education may enter into an agreement with the  
20 foundation for the servicing of educational loans held by the  
21 state treasurer."

22           Section 8. Section 21-21A-19 NMSA 1978 (being Laws 1981,  
23 Chapter 319, Section 19, as amended) is amended to read:

24           "21-21A-19. GIFTS BY PERSONS, CORPORATIONS, INSTITUTIONS  
25 AND ASSOCIATIONS. --

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